

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:08-cr-441-T-17MAP

PHILIP WILLIAM COON

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**RESPONSE OF DEFENDANT COON TO  
COURT'S AMENDED ORDER (DOC. 34)  
AND MOTION FOR RECONSIDERATION**

Defendant Coon hereby files this response to the Court's Amended Order dated December 22, 2008 (Doc. 34) and Motion for Reconsideration of Order granting victim motions (Doc. 33, 34, 41).

**I. Response to Amended Order**

The Court's December 22, 2008 Amended Order (Doc. 34) entered in response to the ruling of the panel majority of the Eleventh Circuit directs the parties and the U.S. Probation Office to confer and to advise the Court within ten days if they determine to pursue alternatives which differ from the current posture of the case. As directed, undersigned counsel has conferred with counsel for the United States and with the U.S. Probation Office. Undersigned counsel now advises the Court as follows:

1. Mr. Coon intends to seek both rehearing and rehearing en banc in the Eleventh Circuit. In the event the rehearing motions are unsuccessful, Mr. Coon will likely petition the United States Supreme Court for a Writ of Certiorari. Mr. Coon believes the finding by the panel majority that the borrowers paid the additional point of closing costs is factually erroneous. Mr. Coon also believes that the process by which this factual finding was adjudicated by the panel majority violated Mr. Coon's rights under the United States Constitution. Given the delay inherent in these additional proceedings Mr. Coon did not oppose the government's motion to continue his sentencing, doc. 38, 39, which the Court has since granted. Doc. 42.
2. During the pendency of the additional appellate proceedings, and continuing if the proceedings are unsuccessful, Mr. Coon will work with the United States and the U.S. Probation Office regarding all matters, including resolution of objections to the presentence investigation report and issues relating to forfeiture and possible restitution.

3. Depending on the outcome of the additional appellate proceedings and the issues relating to forfeiture and restitution, Mr. Coon, as mentioned in the government's motion, doc. 38 at 5, may seek to withdraw from or modify the plea agreement on the ground that it may have been the product of a mutual mistake of fact by the parties.

## **II. Motion for Reconsideration**

As set forth above, Mr. Coon intends to pursue further appellate proceedings directed to the ruling of the Eleventh Circuit panel majority. In the meanwhile, this Court has implemented the panel majority ruling by granting the borrowers' various motions to be considered victims. Doc. 33, 34, 41. Mr. Coon moves for reconsideration of those orders, and submits the following Memorandum in support of this motion.

### **MEMORANDUM**

The Orders of this Court granting the borrowers' motions to be determined victims are predicated on the ruling of the Eleventh Circuit panel majority. As noted above, Mr. Coon believes the factual finding by the panel majority regarding the borrowers' payment of the additional point of closing costs is erroneous and that the process by which this finding was adjudicated by the panel majority

violated Mr. Coon's Constitutional rights. In the event the additional appellate proceedings result in an alteration of the panel majority ruling, this Court should reconsider its Orders accordingly. Thus, Mr. Coon submits that, as with his pending Motion for Clarification and/or Reconsideration regarding disclosure of a portion of the PSR, doc. 36, this Motion for Reconsideration should be deferred pending the additional appellate proceedings. *Cf.* Doc. 43 (deferring ruling on doc. 36). Mr. Coon deems it necessary to submit this Motion for Reconsideration to preserve the record regarding his opposition to the borrowers' motions in light of the fact that each of the motions has been granted prior to any response to them by Mr. Coon.

Respectfully submitted,

/s/ James E. Felman

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 5, 2009, I electronically filed the foregoing with the Clerk of the Court which will send a notice of electronic filing to:

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*/s/ James E. Felman* \_\_\_\_\_